IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 600 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DHIRAJLAL NATHUBHAI BHAYANI & ANR

Appearance:

1. Criminal Appeal No. 600 of 1994

MR KT DAVE, A.P.P. for Petitioner No. 1

MR HARIN P RAVAL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/01/2003

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal u/s. 377 Cr.P.C. against the Judgment and order of sentence dated 31.3.1994 passed by the learned Chief Judicial Magistrate, Rajkot in Criminal Case No.1342 of 1984 against the accused - respondent No.1 for enhancing the sentence.

2. The present respondent No.2 N.J.Mishra, Electrical Inspector filed complaint being Criminal Case No.1342 of 1984 before the Court of learned Chief Judicial Magistrate, Rajkot, against the accused respondent No.1 Dhirajlal Nathubhai Bhayani for committing breach of Rule 79, 82 of the Indian Electrical Rules, 1956 (for short "the Rules") and also for the offence u/ss. 336 and 304(a) of the I.P.Code.

3. In the complaint it is stated that the respondent - accused is having Hair Cutting Saloon at Rajkot. Without obtaining necessary permission under the Rules he was doing construction and because of his rash and negligent act one labourer Gandubhai Archandbhai Suthar, aged about 30 years, lost his life on 6.7.1981 because of the electric shock.

4. After appreciating the evidence led by the complainant the learned trial Judge came to the conclusion that the complainant has proved his case against the accused beyond reasonable doubt and accordingly he convicted the accused under Rule : 140 of the Rules for the breach of Rules 79 & 82(a) of the Rules and ordered to pay fine of Rs.300/-. The learned Magistrate also convicted the accused for the offence u/s.304(a) I.P.Code. However, instead of passing any order of substantive sentence he had only ordered sentence of Till Rising of the Court and to pay fine of Rs.1000/- i/d to under-go 1 month S.I. However, he has not passed any separate order of sentence for the offence u/s.336 I.P.C. though he was convicted for the same offence.

5. When the accused is found guilty for offence u/s.304(a) then ordinarily the Court should not allow the accused to let go with the sentence Till Rising of Court with a meagre fine of Rs.1000/-. In such type of case though there is discretion vested with the Court, the Court should ordinarily pass substantive sentence. This Court would have passed an order of substantive sentence of at-least 6 months, but keeping in mind the fact that the offence took place way back on 6.7.1981 and that complaint was filed after 3 years before the Court by the Electrical Inspector and the learned trial Judge passed the order of conviction and sentence only in March, 1994, therefore, after a period of more than 20 years of offence I do not think it proper to pass any order of substantive sentence against the respondent - accused. However, interest of justice would be served by enhancing the order of fine passed by the learned trial Judge for

the offence u/s.336 I.P.Code.

6. Learned Counsel Shri Harin Raval for the respondent - accused submitted that the respondent - accused is also poor. He is a Barber and he has to maintain his large family, including himself, his wife and 5 daughters. Therefore, reasonable amount of fine be awarded instead of Rs.1000/- awarded by the learned trial Judge. Learned A.P.P. Shri Dave submitted that when this Court is not inclined to pass any order of substantive sentence then heavy fine be imposed for the offence u/s.304(a) I.P.Code.

7. Having regard to the peculiar facts and circumstances of the case and having regard to the family background of the respondent accused and that he is coming from lowly strata of the society, I am of the considered opinion that fine be enhanced to Rs.10,000/- instead of Rs.1,000/- imposed by the learned trial Judge for the offence u/s.304(a) I.P.Code.

8. Accordingly, this Appeal is allowed to the extent that the sentence of fine of Rs.1000/- imposed by the learned trial Judge against the respondent - accused for the offence u/s.304(a) I.P.Code is enhanced to Rs.10,000/- (Rupees ten thousand only). The respondent - accused has already paid the fine of Rs.1000/-, therefore, he is now required to pay additional sum of Rs.9000/- (Rupees nine thousand only) by way of fine for the offence u/s.304(a) I.P.Code. He shall pay the same within 3 months from today, failing which he will have to undergo S.I. for 6 months. Remaining order of sentence passed for other offence by the learned trial Judge is not disturbed. The Appeal is allowed to the aforesaid extent only.

Date : January 23, 2003 (B.J.Shethna, J.)

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